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SENATE BILL 3128

By Henry

AN ACT to amend Tennessee Code Annotated, Title 63, Chapter 6 and Title 63, Chapter 1, to enact the Health Professional Licensure Agency Act of 2000.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 63, Chapter 1, is amended by adding the Sections 2 through 16 of this act as new part 2.

SECTION 2. **Section 63-1-201.** This act shall be known and may be cited as the "Health Professional Licensure Agency act of 2000."

SECTION 3. **Section 63-1-202.**

The purpose of this part is to provide a mechanism to facilitate the regulation of health care professionals and the enforcement of health professional licensure and disciplinary laws in Tennessee through centralized agencies. The health professional licensure agencies may contract with the department of health and other agencies to provide assistance wherever needed.

SECTION 4. **Section 63-1-203.**

As used in this part, unless the context otherwise requires:

(1) "Agency" means a health professional licensure agency;

(2) "Commissioner" means the commissioner of the department of health or the commissioner's designee;

(3) "Department" means the department of health; and

(4) "Executive director" means the chief administrative officer of a health professional licensure agency.

SECTION 5. Section 63-1-204.

(a) The commissioner is authorized to establish health professional licensure agencies as provided in this part. These agencies will provide coordination of funds or programs designated for the regulation of health care professionals and the enforcement of health professional licensure and disciplinary laws for the benefit of the citizens in the state.

(b) The commissioner may establish health professional licensure agencies for medical doctors as established pursuant to part 6 of this title.

(c) Each health professional licensure agency shall be a political subdivision and instrumentality of the state. As such, they shall be deemed to be acting in all respects for the benefit of the people of the state in the performance of essential public functions, and shall be deemed to be serving a public purpose through protecting, improving and otherwise promoting the well-being of the citizens of the state.

SECTION 6. Section 63-1-205.

(a) There is hereby created in each health professional licensure agency listed in §63-6-204(b), a body politic and corporate to be referred to by the name assigned to the respective board, council or committee created in Title 63, Chapters 3 through 28.

(b) The membership of each board, council, or committee is governed by the provisions of their respective practice acts as contained in Title 63, Chapters 3 through 28.

(c) If any matter before any board, council or committee involves a project, transaction or relationship in which a member or the member's associated institution, business or board, council or committee has a direct or a conflicting interest, the member shall make known to the board that interest and shall be prohibited from participating in discussions and voting on that matter.

(d)(1)(A) The members of any board created hereunder shall be appointed by the governor for terms of five (5) years' duration, which terms shall commence on May 1 and expire on April 30, five (5) years thereafter. All board members subsequently added to the board after May 2, 2005, shall be appointed so as to serve staggered terms of from one (1) to four (4) years, with one (1) member appointed to a one-year term, the second member appointed to a two-year term, the third member appointed to a three-year term, and the fourth member appointed to serve a four-year term.

(B) The members appointed by the governor in 2000 shall be appointed as follows:

(i) One (1) member shall be appointed to a one-year term expiring on April 30, 2001;

(ii) One (1) member shall be appointed to a two-year term expiring on April 30, 2002;

(iii) One (1) member shall be appointed to a three-year term expiring on April 30, 2003;

(iv) One (1) member shall be appointed to a four-year term expiring on April 30, 2004; and

(v) One (1) member shall be appointed to a five-year term expiring on April 30, 2005.

(vi) The terms of additional members shall be governed by this section in like manner beginning with the sixth member, with subsequent members serving successively expiring terms.

(2) Members of the board shall, upon expiration of their terms of office, be eligible for reappointment to successive terms.

(3) In making appointments to the boards created hereunder, the governor shall give due regard to the geographic distribution of the membership of the board to assure, to the extent feasible, that all grand divisions of the state are adequately represented on the board.

(4) In the case of the medical licensing board, the governor has discretion to seek recommendations and nominations from the Tennessee Medical Association in making appointments to the board.

(b) All vacancies occurring on the board by reason of death or resignation shall be filled by the governor for the unexpired term.

(c) In making appointments to the board, the governor shall, to the extent feasible, strive to ensure the full ten-member board is composed of at least one (1) person who is sixty (60) years of age or older, one (1) person who is female, and one (1) person who is an African American.

SECTION 7. Section 63-1-206.

Boards, councils, or committees have the following powers and duties in addition to the powers and duties granted to or imposed upon them in their respective practice acts as contained in Title 63, Chapters 3 through 28 and Title 63, Chapter 51 and any other provisions of law:

(1) Adopt written policies, procedures or rules and regulations to govern their internal operations;

(2) Make and execute contracts and all other instruments necessary or convenient for the exercise of their duties and responsibilities under this part and their respective parts and chapters of Title 63 as well as Title 63, Chapter 51. All contracts pertaining to acquisitions and improvement of real property, pursuant to § 4-15-102, must be approved in advance by the commissioner and the state building commission;

(3) Acquire or dispose of in the name of the board, council, or committee, real or personal property or any interest therein, including rights or easements, on either a temporary or long-term basis by gift, purchase, transfer, foreclosure, lease or otherwise, subject to subdivision (2);

(4) Procure insurance in amounts and from insurers, which they deem desirable to protect themselves in carrying out their duties and responsibilities under this part, and their respective parts and chapters of Title 63;

(5) Seek assistance from the commissioner of finance and administration, the comptroller of the treasury, the state treasurer, and other state agencies;

(6) Receive, administer, allocate and disburse funds made available under this part, funds and contributions from private or local public sources which may be used in support of a board, council or committee, and funds made available under any federal or state assistance program for which an agency organized in accordance with the provisions of this part may serve as grantee, contractor or sponsor of projects appropriate for inclusion in health professional licensure agencies;

(7) Perform other acts necessary or convenient to exercise the powers granted or reasonably implied in this part and their respective parts and chapters of Title 63 as well as Title 63, Chapter 51;

(8) Procure goods, materials, supplies and equipment in accordance with applicable state or federal guidelines, and where practical, on a competitive basis; and

(9) Contract with other state agencies to provide services to or receive services from those agencies as deemed appropriate by the board. In addition, such boards shall be further authorized to contract for credentials verification and other similar services with credentials verification organizations incorporated in Tennessee that are accredited by the National Committee on Quality Assurance (NCQA). Such credentials verification information, which such entities transfer and transmit between hospitals and insurance networks and the department and the boards hereby created, is protected by § 63-6-219.

SECTION 8. **Section 63-1-207.**

The commissioner has the duty and responsibility to:

(1) Promulgate rules and regulations to carry out the commissioner's responsibilities under this part;

(2) Review and approve plans of operation submitted in accordance with § 63-1-209, with the concurrence of the commissioner of finance and administration and the comptroller of the treasury;

(3) Enter into such contracts, subject to applicable rules and regulations and procedures, as necessary to carry out the provisions of this part. Each board shall itself have the authority to enter into contracts for administrative, disciplinary, and licensure services as it deems fit, in consultation with the commissioner;

(4) Appoint an executive director for each agency with such appointment subject to the approval of the board, council or committee created within that agency. Nothing in this subdivision shall prohibit a board, council or committee

from submitting recommendations to the commissioner for the appointment of an executive director;

(5) Require each agency to submit annual reports on each preceding fiscal year to reflect the nature and extent of all financial transactions and to assure financial integrity; and

(6) Perform other acts necessary or convenient to exercise the powers granted or reasonably implied in this part.

SECTION 9. **Section 63-1-208.**

The executive director, subject to approval of the board, council or committee and approval of the plan of operation pursuant to § 63-1-209, has the authority to hire such employees, set such salaries and incur such expenses as may be necessary for proper discharge of the duties of the health professional licensing agency.

SECTION 10. **Section 63-1-209.**

(a) At least ninety (90) days prior to the beginning of each state fiscal year, the board, council, or committee shall submit a plan of operation for review and approval to the commissioners of health and finance and administration and the comptroller of the treasury. The plan of operation shall be in such form as may be required by the department and shall include, but not be limited to, the following:

(1) A budget for operating and capital expenditure;

(2) Contracts for services;

(3) Appropriate policies and procedures adopted by the board, council or committee to govern the expenditures of funds; and

(4) Other items as required by the department through rules and regulations.

(b) The plan of operation may be amended during the fiscal year with the written approval of the commissioners of health and finance and administration and the comptroller of the treasury.

(c) For the first year of operation, a plan of operation shall be submitted within sixty (60) days of July 1, 2000.

SECTION 11. Section 63-1-210.

(a) The executive director of each agency shall deposit with the state treasurer funds received from the United States treasury and other funds earned, given, collected, or granted to the agency, including state funds.

(b) Such funds may be invested in the local government investment pool pursuant to Title 9, Chapter 4, Part 7.

(c) The board, council, or committee may establish such bank accounts pursuant to § 9-4-302, as are necessary for the efficient management of their respective agency.

(d) All funds deposited shall be credited by the state treasurer as provided in § 63-1-137.

SECTION 12. Section 63-1-211.

(a) Each board, council, or committee shall make an annual report to the governor and to the commissioner.

(b) This report shall contain an accounting for all money received and expended, statistics on persons served during the year, recommendations and such other matters as the board, council or committee deems pertinent.

SECTION 13. Section 63-1-212.

(a) The comptroller of the treasury shall make an annual audit of the program established by this part as part of the comptroller's annual audit pursuant to § 9-3-211.

(b) The health professional licensure agencies shall maintain all books and records in accordance with generally accepted accounting principles, and at no less than

those recommended in the "Accounting Manual for Recipients of Grant Funds in Tennessee" published by the comptroller of the treasury. Such records shall be made available for inspection to the department and/or the comptroller of the treasury, upon request.

SECTION 14. Section 63-1-213.

Employees of the health professional licensure agencies shall be considered "state employees" for purposes of § 9-8-307. Designated volunteers providing services under this part shall also be considered "state employees" for purposes of § 9-8-307.

SECTION 15. Section 63-1-214.

This part shall be given the following construction:

(1) This part shall be construed as remedial legislation and shall be given liberal construction to effectuate its purpose;

(2) This part shall not be construed as creating an employer-employee relationship between the department, the health professional licensure agencies or their contractors;

(3) This part shall be construed to relieve the division of health-related boards from any and all obligations contained in Chapter 1 of this part as to any board, council and committee created pursuant to this chapter;

(4) This part shall not be construed as repealing any board, council or committee rules in existence at the time a board, council or committee is designated as a health professional licensing agency pursuant to this part and such rules shall continue in effect until such time as they are amended or repealed or terminated by operation of law; and

(5) If any provision of this part or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other

provisions or applications of the part which can be given effect without the invalid provisions or applications, and to that end the provisions of this part are declared to be severable.

SECTION 16. Section 63-1-215.

(a) Health professional licensure agencies shall be eligible to be a participating employer in the Tennessee consolidated retirement system.

(b) All liabilities owed by a health professional licensure agency and all assets of whatever kind and nature and wherever located, including, but not limited to, real property, personal property, cash, equipment and fund balances held in the name of a health-related board, council or committee shall be transferred to the appropriate health professional licensure agency upon its creation.

(c) The employees of a health-related board, council or committee may, upon approval of the board, council or committee be transferred to the appropriate health professional licensure agency, and such transfer shall not constitute a break in service for such employees.

(d) No action taken pursuant to this act shall be deemed to change the structure of the organization, formerly organized within the division of health-related boards, for federal tax reporting purposes, nor reduce employees' benefit-related plans including, but not limited to, retirement plans, deferred compensation plans, cafeteria plans and health plans.

SECTION 17. Tennessee Code Annotated, Section 63-6-104 is amended in subdivision (b)(2) by adding the following language to the end thereto:

Provided, upon the commissioner making the designation authorized by § 63-1-204(b), all funds of the board shall be governed by § 63-1-210.

SECTION 18. Tennessee Code Annotated, Section 63-6-209, is amended in subsection (a) by deleting the words "by the division as directed by the board", and is further amended in

the second sentence by adding the words "or the executive director of the board" after the word and punctuation "boards," and before the word "which", and is further amended by adding the following as new-appropriately lettered subsections:

(e) For the purpose of effecting service of process upon a licensee for any purpose including service of a notice of charges, service on the licensee by certified mail, return receipt requested, at the address contained on the most recently issued registration certificate, regardless of whether the licensee accepts such service personally or through any employee or fails to accept or avoids such service, shall be sufficient for the board to proceed by default under the document certified to that address.

(f) Before issuing any license as provided herein, the license shall be signed by the members of the board.

(g)

(1) A licensee whose license has been lost or destroyed may make application to the board for a new license. The application shall be accompanied by an affidavit setting out the facts concerning the loss or destruction of the license.

(2) Any licensee whose name is changed by marriage or court order shall surrender such person's license and apply to the board for an appropriately re-named license. This board shall not unduly delay the issuance of such renamed license, and this section does not contemplate a full re-application for such license as if the prior license was revoked.

(3) The fee for such new licenses shall be set by the board.

(h)

(1) A licensee who seeks to be licensed in another state by reciprocity or endorsement on the basis of such licensee's Tennessee license may, upon

request, receive a certificate of fitness issued by the board containing all necessary and relevant information regarding the standing of the Tennessee license.

(2) The fee for this certificate shall be set by the board.

SECTION 19. Tennessee Code Annotated, Section 63-6-213, is amended in subsection (a) by deleting the words "The members of the board shall investigate" and by substituting instead the words "The board shall cause to be investigated", and is further amended in such subsection by deleting the words "such member or members" and by substituting instead the words "the board", and is further amended by adding the following as new subsection (e):

(e)(1) With respect to any person required to be licensed, permitted, or authorized by the board, the board may assess a civil penalty against such person in an amount not to exceed one thousand dollars (\$1,000) for each separate violation of a board statute, rule, or order. Each day of continued violation constitutes a separate violation. This section is intended, in addition to authorizing the assessment of civil penalties against licensees, to give jurisdiction to the board over persons who are not licensed pursuant to this chapter but who are practicing medicine and those who are licensed but are practicing medicine in violation of a restriction or condition placed on their licenses, or who are practicing after their licenses have been revoked or suspended by action of the board.

(2) The board shall by rule establish a schedule designating the minimum and maximum civil penalties that may be assessed under this section. In assessing civil penalties, the following factors may be considered:

- (A) Whether the amount imposed will be a substantial economic deterrent to the violator;
- (B) The circumstances leading to the violation;
- (C) The severity of the violation and the risk of harm to the public;

(D) The economic benefits gained by the violator as a result of noncompliance; and

(E) The interest of the public.

(3) Civil penalties assessed pursuant to this section shall become final thirty (30) days after the date a final order of assessment is served, unless the matter has been appealed pursuant to the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

SECTION 20. Tennessee Code Annotated, Section 63-6-214, is amended in subdivision (a)(4) by inserting the words and punctuation ", corrective actions," between the words "censures" and "and", and is further amended in subsection (b) by adding, as a new, appropriately numbered item, the language " () Practicing medicine without a license issued by the board or on a license that has been revoked or suspended by the board, or practicing in violation of any restriction or condition placed upon a license by the board;", and is further amended by deleting subsections (m), (n), and (o) in their entirety, and is further amended by adding the following language as new, appropriately numbered subdivisions in subsection (h):

(h)(3) Records of hospitals, laboratories, nursing homes, homes for the aged, ambulatory surgical treatment centers, home health agencies, home health services, and recuperation centers, except as provided in § 63-6-219, shall be made available for inspection and copying, at a reasonable cost, when requested by a duly authorized representative of the board.

(4) Any representative of any health care facility set out in this section who furnishes records to a duly authorized representative of the board shall be immune from liability to any patient, individual or organization for furnishing such information, data, reports or records, or for damages resulting from any decision, opinion, action and proceedings rendered, entered or acted upon by the board or any of the health-related boards, if the information or other records or documents provided were provided or

created in good faith and without malice and on the basis of facts reasonably known or reasonably believed to exist. Any representative of any individual health care practitioner and any individual health care practitioner who furnishes records to a duly authorized representative of the board shall be immune from liability to any patient, individual or organization, except the board as it relates to disciplinary matters which prompted the request for the production of the records, for furnishing such information, data, reports or records, if the information or other records or documents provided were provided or created in good faith and without malice and on the basis of facts reasonably known or reasonably believed to exist.

SECTION 21. Tennessee Code Annotated, Title 63, Chapter 6 is amended by adding the following new, appropriately numbered section:

Section _____. The board is authorized to adjust any fees authorized by this chapter by means of public necessity rules to assure compliance with the provisions of § 4-3-1011.

SECTION 22. This act shall take effect July 1, 2000, the public welfare requiring it.